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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/584,163      | 03/09/2007  | Gunter Gomoll        | 2003P01974WOUS      | 4748             |

46726 7590 06/03/2010  
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| EXAMINER |
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AYRES, TIMOTHY MICHAEL

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3637

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|-------------------|---------------|
| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

06/03/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

### Office Action Summary

**Application No.**

10/584,163

**Applicant(s)**

GOMOLL ET AL.

**Examiner**

TIMOTHY M. AYRES

**Art Unit**

3637

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-16, 21-28 and 31-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-16, 21-28 and 31-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by applicant admitted prior art figure 1. As seen in figure 1 of this application a body (6) and door (7) of a refrigerator are installed in a niche (1). As seen in the figure when the door (7) is open it projects beyond a front edge (3) of the niche.

3. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Finding the right refrigerator by Roe Osborn from fine homebuilding magazine. Osborn teaches different embodiments of refrigerators in stalled in a niche. As seen in the refrigerator on page 99, the body of the refrigerator is flush with the niche and the door projects beyond the edge. As also seen in the picture on page 99, the door of the refrigerator has a receiving area that extends inside the body of the refrigerator and into a cavity on the door. Regarding claims 15, Osborn teaches a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche such as seen on page 100 and 101.

4. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Hide That Ugly Refrigerator by Rex Alexander from fine homebuilding magazine. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche.

5. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,079,216 to de Marsillac Plunkett. De Marsillac teaches a refrigerator unit installed in a niche as seen in figure 1, 2, and 4. The refrigerator comprises a body (1) and thermally insulated door (4,5). The niche (21) is the recess in the wall (20), it should also be noted that the niche is not considered to be positively claimed and is considered just a reference point to define structure of the refrigerator. Regarding claim 15, Also with no structure of niche there is no reference point to define a front of the niche or refrigerator.

6. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,790,146 to Mun. Mun teaches a refrigerator capable of being installed in a niche. The refrigerator comprises a body and thermally insulated door. While no niche is specified in most kitchens the refrigerator is deigned to fit in a niche, even if there is room between the body and the niche, but this is irrelevant since the claims do not positively

require the niche and the refrigerator of Mun is very capable of being positioned in the positions required by the claim without any modification to the refrigerator.

7. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,358,326 to Cherry. Cherry teaches a refrigerator in stalled in a niche. The refrigerator comprises a body and thermally insulated door. The examiner is interpreting the front of the refrigerator to mean the front of the body (Col. 1, lines 15-20) since it known in the art (as reinforced by page 101 in the finding the right refrigerator article) that the doors and handles of counter depth refrigerator stick out beyond the cabinet front since the body of a counter depth refrigerator is designed to be 24 in and cabinets are also designed to be 24 inches with minor variations in design and manufacturing. Regarding claims 15 and 16, Cherry to teach a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche.

8. Claims 14, 23-28, and 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2,728,203 to King. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that is considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 15, 16, 21, 22, 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,728,203 to King in view of "Hide That Ugly Refrigerator" by Rex Alexander from fine homebuilding magazine. King discloses every element as claimed and discussed above except the refrigerator installed in a niche and the relationship of the refrigerator to niche. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of King by putting it in a niche as taught by Alexander to help give the kitchen a build in look while not using a built-in refrigerator.

11.

12. Claims 14-16, 21-28, and 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Faux Fridge Front" by Mike Guertin from fine homebuilding magazine in view of US Patent 2,728,203 to King. Guertin teaches a refrigerator installed in a furniture niche as seen in figure on page 53. The refrigerator body is behind the front edge of the niche and the decorative panel of the door projects beyond the front edge when the door is closed as seen in the left figure on page 52. Guertin does not expressly disclose a receiving area in the door that does not project into an interior of body of the refrigerator. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that are considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14). At the time of the invention it would have been obvious to use the refrigerator of King (simple substitution) as the base refrigerator and then add the decorative panel onto that in the location as taught by Guertin.

### ***Response to Arguments***

13. Applicant's arguments filed 5/14/10 have been fully considered but they are not persuasive. As previously stated, the examiner considers claims 14 and 27 as to not positively recite the niche and therefore the claims are directed just to a refrigerator. Furthermore even if positively claimed as seen in claim 37, there is no special definition

in specification for "projecting beyond a front edge of the furniture niche" therefore there is nothing in the claims that require that the door needs to be closed when it projects beyond a front edge nor does there need to be cupboard element as part of the furniture niche. Therefore the previous rejections on claim 14 are considered valid. In regards to the arguments towards claims 27 and the receiving area, these are considered valid even though the examiner considers some references to imply a portion of the shelves only within a compartment in the door; the references do not expressly discuss or show this with enough detail. US Patent 2,728,203 to King is considered to teach the structure of the door as claimed. In addition the other newly cited references teach some or all of those same features of the door also.

14. While claim 37 does claim the need to project beyond the front edge when the door is closed, but does not claim a cupboard element. The references of Alexander, Osborn, and Guertin each teach the same location of the placement of the refrigerator in the niche as claimed even though with a different refrigerator structure.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within



TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY M. AYRES whose telephone number is (571)272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./

/Darnell M Jayne/

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Examiner, Art Unit 3637  
5/25/2010

Supervisory Patent Examiner, Art  
Unit 3637